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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MM Docket No. 94-134  
Table of Allotments, ) RM-8538  
FM Broadcast Stations )  
(Burlington, Colorado; )  
Brewster, Kansas) )

To: Acting Chief, Allocations Branch

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS**

Bruce Corman, Kay Hanley and Charley P. Barnes ("Petitioners"), by their attorneys, pursuant to Public Notice Report No. 2056, released February 10, 1995<sup>1/</sup>, hereby file their reply comments to the Comments and Counterproposal of KNAB, Inc. in this proceeding. In reply thereto, the following is submitted:

Petitioners Timely Filed Comments of  
Continuing Interest and Verification

1. On January 27, 1995, KNAB, Inc. filed Reply Comments and a Motion to Dismiss Petition for Rule Making stating that the Petitioners failed to include the mandatory verification required by Notice of Proposed Rule Making, DA 94-1264, released November 22, 1994. This is incorrect. As shown in the attached affidavits of Petitioners, by a filing dated November 30, 1994, a statement of continuing interest and an affidavit were filed by Petitioners in MM Docket No. 94-134 with reference to the

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<sup>1/</sup> These Reply Comments are filed within 15 days after the date of the public notice. Accordingly, these Reply Comments are timely filed.

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allotment of Channel 257C1 to Burlington, Colorado.<sup>2/</sup> See Attachment I. Attached to each of the affidavits of the Petitioners is a copy of the November 30, 1994 affidavit of Charley P. Barnes verifying the truth and accuracy of the statements contained in the Petitioners' petition. Also attached is a United States Postal Service PS Form 3811 showing an FCC delivery date of December 5, 1994 of this statement of continuing interest and affidavit. Petitioners, as a general partnership under law, are bound by the statements of Charley P. Barnes, a general partner. Accordingly, the requirements of the Notice of Proposed Rule Making were fully satisfied by the filing dated November 30, 1994 of Petitioners in which they: (1) restated their interest in pursuing the allotment for Channel 257C1 to Burlington, Colorado, and if authorized, building a station promptly; and (2) submitted the affidavit stating that the statements in the October 20, 1994 Petition for Rule Making were true and accurate.

The KNAB, Inc. Counterproposal is Deficient

2. KNAB, Inc., the licensee of the only two radio stations licensed to Burlington, Colorado, has counterproposed the allotment of Channel 257C1 to Brewster, Kansas in lieu of Burlington, Colorado. Its Counterproposal, while containing a statement of interest in applying for the Brewster, Kansas allotment, qualifies the intent of KNAB, Inc. by stating that if

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<sup>2/</sup> The Affidavits of Bruce Corman, Kay Hanley and Charley P. Barnes are attached as Attachment I to these Reply Comments attesting to such.

a channel is allotted to Burlington, it will not apply for the Brewster channel.

3. In reality, the KNAB, Inc. proposal is a frivolous, abusive proposal designed to stop competition from occurring in Burlington, Colorado. As shown in Attachment II to these Reply Comments, there are at least four other Class C1 channels that could be allotted to Brewster, Kansas at the community reference coordinates, as well as six alternate Class C1 channels that could be allotted to Burlington, Colorado at the community reference coordinates.<sup>3/</sup> Other than to try to keep a channel from being allotted to Burlington, Colorado, there does not appear to be any reason why KNAB, Inc. filed a Counterproposal proposing Channel 257C1 be allotted to Brewster, Kansas.

4. The Petitioners suggest that to resolve this proceeding, Channel 228C1 be allotted to Brewster, Kansas (assuming that the KNAB, Inc. statement of interest in its counterproposal is held to be valid), and Channel 257C1 be allotted to Burlington, Colorado. As shown in Attachment II, any number of allotment schemes may be instituted that would allow both Burlington, Colorado and Brewster, Kansas to be each allotted a Class C1 channel. Accordingly, the Counterproposal of KNAB, Inc. should

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<sup>3/</sup> Channel studies for each of these possible alternate channels are attached in Attachment II. It should be noted, of course, that not all of the channels may be allotted to both Burlington and Brewster, as some of the additional allotments for Burlington would foreclose an allotment on the same or adjacent channels to Brewster. Nonetheless, there are certainly adequate alternate channels to accommodate the expressions of interest filed in this proceeding.

not forestall the allotment of a Class C1 channel to Burlington, Colorado.

Burlington, Colorado is deserving  
of a First Competitive Service

5. KNAB, Inc. claims that the Burlington/Kit Carson County economy is stagnant and will not support the addition of another radio station at Burlington. KNAB, Inc., the licensee of the only AM and FM combination licensed to Burlington, however, is simply trying to forestall competition. As shown in Attachment III, there were at least 21 new businesses opened in Kit Carson County during the years 1993 through 1994. There are also several other business that have expanded during this time period. Burlington has recently completed a large modern fire station to accommodate its growing population. There is a proposed hog operation for Kit Carson County that will provide approximately 100 new jobs and an annual payroll of \$2.8 million.

6. Sales tax revenues have increased in the region from \$431,948.54 in 1988 to \$540,846.04 in 1994. Retail sales have likewise increased for Kit Carson County. Attached in Attachment III is a wealth of information on both Burlington and Kit Carson County showing growth patterns that entitle Burlington, the county seat, and the region to a second competitive radio voice.

7. In any event, the Petitioners note that it remains the Commission's policy not to address the potential economic impact of new allotments on existing stations. See Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993); FM Channel Assignments, Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on

Existing Stations, 3 FCC Rcd 638 (1988) aff'd 4 FCC Rcd 2276 (1989). Even if the information in Attachment III did not show that the economy of both Burlington and the region were expanding, the Commission would be well justified in following existing precedent by allotting an additional competitive channel to Burlington. The Commission does not need to make that decision, however, as the material submitted in Attachment III clearly shows that Burlington and Kit Carson County are a growing area.

#### Restatement of Continuing Interest

8. So that there is no confusion or mistake, Petitioners in Attachment I in affidavit form once again state their interest in the allotment of a Class C1 channel to Burlington, Colorado, and their intention to apply for the channel, if allotted, and if authorized, to build a station promptly. As noted above, the Petitioners filed the appropriate affidavit by the comment date in this proceeding. Because channels may be allotted that can accommodate both the interest of Petitioners and KNAB, Inc. in this proceeding, however, even absent such a filing by the comment date, the Commission would be justified under case law precedent in proceeding with the allotment to Burlington, since acceptance of these comments and the enclosed affidavits would not prejudice any other party to this proceeding. See e.g. Chenango Bridge, Norwich, and Cincinnatus, New York, 8 FCC Rcd 6621, 6622 fn. 6 (1993). Accordingly, Channel 257C1 should be allotted to Burlington, Colorado as requested by the Petitioners.

WHEREFORE, for the reasons above, the Commission should allot Channel 257C1, or an equivalent FM channel to Burlington, Colorado, as its first competitive radio voice.

Respectfully submitted,

**BRUCE CORMAN, KAY HANLEY,  
CHARLEY P. BARNES**

By: \_\_\_\_\_

  
John F. Garziglia  
Their Attorney

Pepper & Corazzini, L.L.P.  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-0600

February 27, 1995

# ***ATTACHMENT I***

### **AFFIDAVIT**

I, Bruce Corman, do hereby declare and state that:

1. I reside at 17344 County Road 43, Burlington, Colorado 80807.

2. By a petition to amend the FM Table of Allotments to add Channel 257C1 at Burlington, Colorado dated October 20, 1994, Kay Hanley, Charley P. Barnes and Bruce Corman filed a petition for rule making with the Federal Communications Commission. The statements contained in that filing dated October 20, 1994 are true and accurate to the best of my knowledge.


3. By a filing dated November 30, 1994, the attached continuing statement of interest and affidavit were filed in MM Docket No. 94-134, RM-8538, with reference to the allotment of Channel 257C1 to Burlington, Colorado. Also attached is a copy of a Domestic Return Receipt, PS Form 3811, showing that the November 30, 1994 filing was received by the Secretary, Federal Communications Commission, on December 5, 1994.

4. Kay Hanley, Charley P. Barnes and Bruce Corman have a continuing interest in the allotment of a Class C1 channel to Burlington, Colorado, and restate their present intention to apply for the channel, if allotted, and if authorized, to build a station promptly.

5. Also attached is information indicating growth of certain businesses and industry in the Burlington, Colorado area. It is my belief that Burlington, Colorado is entitled to the allotment of an additional FM channel so as to provide a second independent voice licensed to the community.




Executed this 21<sup>st</sup> day of February, 1995 under penalty of perjury.

  
Bruce Corman

STATE OF COLORADO                    )  
                                              ) ss:  
COUNTY OF KIT CARSON            )

21<sup>st</sup> The foregoing instrument was acknowledged before me this day of February, 1995 by Bruce Corman. Witness my hand and official seal.

  
Notary Public

My Commission Expires: 8/22/98

Charley P. Barnes  
524 15<sup>th</sup> Street  
Burlington, CO 80807  
(719) 346-7520 (home)  
(719) 346-7114 (fax)

November 30, 1994

Secretary  
Federal Communications Comm.  
1919 M Street NW  
Washington, DC 20554

Attention: John A. Karousos, Acting Chief  
Allocations Branch

RE: MM Docket No. 94-134  
RM-8538


Gentlemen:

With reference to the above action, the petitioners, Bruce Corman, Kay Hanley and Charley P. Barnes, hereby reinstate their interest in pursuing the allocation of Channel 257C1 in Burlington, Colorado, and if authorized, to build a station promptly as required by the Commission in the Appendix.

Sincerely,

  
Bruce Corman

Kay Hanley

  
Charley P. Barnes

Docket No. 94-134  
RM-8538

  
Charley P. Barnes

11/30/84  
Date

Charley P. Barnes appeared before me personally this 30<sup>th</sup> day of November 1994.

Lia J. Brown  
Notary Public

My commission expires 8/22/98

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services
- Complete items 3, and 4a & b
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

SECRETARY  
PLC  
1917 M ST. NW  
WASHINGTON, DC 20034  
ATTN: FM ALLOCATIONS Bn.

4a. Article Number

7 030155 085

4b. Service Type

- ☐ Registered ☐ Insured  
☒ Certified ☐ COD  
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

12/5/94

5. Signature (Addressee)

6. Signature (Agent)

*[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

### **AFFIDAVIT**

I, Kay Hanley, do hereby declare and state that:

1. I reside at 230½ 14th Street, Burlington, Colorado 80807.

2. By a petition to amend the FM Table of Allotments to add Channel 257C1 at Burlington, Colorado dated October 20, 1994, Charley P. Barnes, Bruce Corman and Kay Hanley filed a petition for rule making with the Federal Communications Commission. The statements contained in that filing dated October 20, 1994 are true and accurate to the best of my knowledge.

3. By a filing dated November 30, 1994, the attached continuing statement of interest and affidavit were filed in MM Docket No. 94-134, RM-8538, with reference to the allotment of Channel 257C1 to Burlington, Colorado. Also attached is a copy of a Domestic Return Receipt, PS Form 3811, showing that the November 30, 1994 filing was received by the Secretary, Federal Communications Commission, on December 5, 1994.

4. Charley P. Barnes, Bruce Corman and Kay Hanley have a continuing interest in the allotment of a Class C1 channel to Burlington, Colorado, and restate their present intention to apply for the channel, if allotted, and if authorized, to build a station promptly.

5. Also attached is information indicating growth of certain businesses and industry in the Burlington, Colorado area. It is my belief that Burlington, Colorado is entitled to the allotment of an additional FM channel so as to provide a second independent voice licensed to the community.

Executed this 21<sup>st</sup> day of February, 1995 under penalty of perjury.

Kay Hanley  
Kay Hanley

STATE OF COLORADO                    )  
                                          ) ss:  
COUNTY OF KIT CARSON            )

21<sup>st</sup> The foregoing instrument was acknowledged before me this day of February, 1995 by Kay Hanley. Witness my hand and official seal.

Lia J. Brown  
Notary Public

My Commission Expires: 8/22/98

Charley P. Barnes  
524 15<sup>th</sup> Street  
Burlington, CO 80807  
(719) 346-7520 (home)  
(719) 346-7114 (fax)

November 30, 1994

Secretary  
Federal Communications Comm.  
1919 M Street NW  
Washington, DC 20554

Attention: John A. Karousos, Acting Chief  
Allocations Branch

RE: MM Docket No. 94-134  
RM-8538

Gentlemen:


With reference to the above action, the petitioners, Bruce Corman, Kay Hanley and Charley P. Barnes, hereby reinstate their interest in pursuing the allocation of Channel 257C1 in Burlington, Colorado, and if authorized, to build a station promptly as required by the Commission in the Appendix.

Sincerely,



Bruce Corman

Kay Hanley



Charley P. Barnes

AFFIDAVIT

Docket No. 94-134  
RM-8538

I, Charley P. Barnes, hereby state that, to the best of my knowledge, all statements contained in the documents for the above petition filed on October 20, 1994, are true and accurate.

  
Charley P. Barnes

11/30/94  
Date

[illegible]

Charley P. Barnes appeared before me personally this 30<sup>th</sup> day of November 1994.

Lia J. Brown  
Notary Public

My commission expires 8/22/98



Is your RETURN ADDRESS completed on the reverse side?

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1. ☐ Addressee's Address

2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

SECRETARY  
FCC  
1919 M ST. NW  
WASHINGTON, DC 20554  
ATTN: FM ALLOCATIONS PM

4a. Article Number

7020155085

4b. Service Type

☐ Registered ☐ Insured

☒ Certified ☐ COD

☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

12/5/94

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

*[Signature]*

Thank you for using Return Receipt Service.

### **AFFIDAVIT**

I, Charley P. Barnes, do hereby declare and state that:

1. I reside at 524 15th Street, Burlington, Colorado 80807.

2. By a petition to amend the FM Table of Allotments to add Channel 257C1 at Burlington, Colorado dated October 20, 1994, Bruce Corman, Kay Hanley and Charley P. Barnes filed a petition for rule making with the Federal Communications Commission. The statements contained in that filing dated October 20, 1994 are true and accurate to the best of my knowledge.

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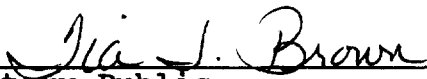
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Charley P. Barnes

STATE OF COLORADO                    )  
                                              ) ss:  
COUNTY OF KIT CARSON            )

21<sup>st</sup> The foregoing instrument was acknowledged before me this day of February, 1995 by Charley P. Barnes. Witness my hand and official seal.

  
Notary Public

My Commission Expires: 8/22/98

Charley P. Barnes  
524 15<sup>th</sup> Street  
Burlington, CO 80807  
(719) 346-7520 (home)  
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November 30, 1994

Secretary  
Federal Communications Comm.  
1919 M Street NW  
Washington, DC 20554

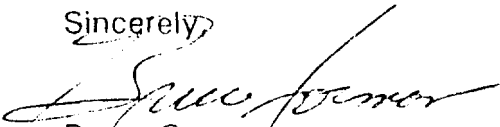
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Sincerely,



Bruce Corman

Kay Hanley



Charley P. Barnes

AFFIDAVIT

Docket No. 94-134  
RM-8538

I, Charley P. Barnes, hereby state that, to the best of my knowledge, all statements contained in the documents for the above petition filed on October 20, 1994, are true and accurate.

  
Charley P. Barnes

11/30/94  
Date

STATE OF COLORADO     )  
                                          ) SS.  
COUNTY OF KIT CARSON )

Charley P. Barnes appeared before me personally this 30<sup>th</sup> day of November 1994.

  
Notary Public

My commission expires 8/22/98

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3. Article Addressed to:

SECRETARY  
FCL  
1919 M ST. NW  
WASHINGTON, DC 20054  
ATTN: FM ALLOCATIONS BR.

4a. Article Number

Z 020155 085

4b. Service Type

- ☐ Registered ☐ Insured  
☒ Certified ☐ COD  
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

12/5/94

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

*[Signature]*

Thank you for using Return Receipt Service.

## ***ATTACHMENT II***

PEPPER & CORAZZINI  
WASHINGTON DC 20006

Alternate Class C1 Channels for Brewster, Kansas

REFERENCE	CLASS C1	DISPLAY DATES
39 21 42 N		DATA 01-27-95
101 22 36 W	Current rules spacings	SEARCH 02-27-19
----- CHANNEL 224 - 92.7 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KQMA	223C1	Phillipsburg	KS	81.0	181.01	177.0	4.01
ALOPEN	222C2	Holyoke	CO	329.8	156.91	79.0	77.91
KSEC	227C1	Lamar	CO	215.9	181.57	82.0	99.57



PEPPER & CORAZZINI  
WASHINGTON DC 20006

Alternate Class C1 Channels for Brewster, Kansas

REFERENCE	CLASS C1	DISPLAY DATES
39 21 42 N		DATA 01-27-95
101 22 36 W	Current rules spacings	SEARCH 02-27-19
----- CHANNEL 228 - 93.5 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KSEC	227C1	Lamar	CO	215.9	181.57	177.0	4.57
ALOPEN	231A	Idalia	CO	295.6	87.26	75.0	12.26
ALOPEN	230C2	Mccook	NE	34.5	113.56	79.0	34.56
KNABFM	281C1	Burlington	CO	264.4	76.55	34.0	42.55